

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE**

NORTHWEST COMMUNITIES EDUCATION  
CENTER

and

Cases 19-CA-31777  
19-CA-31983

TEAMSTERS LOCAL 760

and

Case 19-CA-31843

SAIDA M. BIRRUETA, an Individual

and

Case 19-CA-31911

JESUS SOSA, an Individual

*Daniel Apoloni, Esq. and Richard C. Fiol, Esq.,*  
Seattle, WA, for the General Counsel  
*Gary Lofland, Esq., Lofland & Associates,*  
Yakima, WA, for the Respondent

**DECISION**

**Statement of the Case**

**Gerald A. Wacknov, Administrative Law Judge:** Pursuant to notice a hearing in this matter was held before me in Yakima, Washington on January 26, 27 and 28, 2010, and in San Francisco, CA and Seattle, Washington by video conferencing on February 22, 2010. The captioned charges were filed between the dates of March 5, 2009 and June 29, 2009. Said charges were separately filed by Teamsters Local 760 (Union), by Saida M. Birrueta, an Individual, and by Jesus Sosa, an Individual. On June 26, 2009, the Regional Director for Region 19 of the National Labor Relations Board (Board) issued a complaint and notice of hearing alleging violations by Northwest Communities Education Center (Respondent) of Section 8(a)(1) of the National Labor Relations Act, as amended (Act). On October 30, 2009, the Regional Director for Region 19 issued an order consolidating cases and notice of hearing alleging violations by the Respondent of Section 8(a)(1) and (5) of the Act. The Respondent, in its answers to the complaints, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing briefs have been received from Counsel for the General Counsel (General Counsel) and counsel for the Respondent.<sup>1</sup> Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

## Findings of Fact

### I. Jurisdiction

The Respondent is a State of Washington nonprofit corporation, with an office and place of business located in Granger, Washington, where it is engaged in community development projects and operates a community service radio station with the call letters KDNA. On March 31, 2009, in a related proceeding before the Board in Case 19-UC-765, of which case I take official notice, the Respondent stipulated as follows:

The Employer, a Washington non-profit corporation, is engaged in the operation of a radio broadcasting station. During the year preceding the filing of the petition, a representative period, the Employer in the conduct of its operations at its Granger, Washington facility, derived gross annual revenues in excess of \$800,000. During the same period, at least \$50,000 of the revenues was derived from grants used to fund the operations of the radio station and came from the Federal Government and Fred Hutchinson, both of which meet the National Labor Relations Board's direct jurisdictional standards.

On the basis of the foregoing stipulated facts, and the admission by the Respondent in the instant matter that the Respondent is an employer over which the Board has jurisdiction, I find the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

### II. The Labor Organization Involved

It is admitted, and I find, that the Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act,

### III. Alleged Unfair Labor Practices

#### A. Issues

The principal issues in this proceeding are whether the Respondent has violated Section 8(a)(1) of the Act by disciplining an employee, and by denying an employee's request to have a union representative present during an interview; and whether the Respondent has violated Section 8(a)(1) and (5) of the Act by unilaterally changing employees' lunch schedules.

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<sup>1</sup> On March 31, 2010, following receipt of Respondent's brief, the General Counsel filed a Motion to Strike Portions of Respondent's Brief, maintaining that Respondent's brief misrepresented and supplemented certain record evidence, or introduced new and additional evidence beyond the confines of the record. The Respondent filed a response, dated April 6, 2010. Having considered the General Counsel's motion and the Respondent's response, I shall deny the General Counsel's motion, as the matters raised in Respondent's brief, and objected to by the General Counsel, are not prejudicial to the General Counsel's position.

## B. Facts and Analysis

### 1. Background

5 The Respondent is a nonprofit corporation, with an office and place of business located in Granger, Washington, where it is engaged in community development projects. It owns a facility located in Granger, Washington, where it provides space for other organizations as well as a community center. The primary business of the Respondent, however, is the operation of a community service radio station with the call letters KDNA. At the time of the incidents involved herein it employed approximately 12 employees.

15 The Respondent is governed by a five or six-member board of directors. The board of directors is responsible for hiring and overseeing the Respondent's executive director. The executive director is in charge of the Respondent's daily operations, and reports to the board of directors. The station manager, a supervisor, reports to the executive director.

20 After many years the Respondent's former executive director, Ricardo Garcia, retired. He was replaced in about July, 2008, by a new executive director, Maria Fernandez. Many of the employees, who over the years had become comfortable with Garcia's rather informal management style, began having difficulty relating to and working under the direction of Fernandez, their new executive director. They voiced their concerns among themselves, and sometimes, during their lunch breaks, in the presence of the Station Manager Gabriel Martinez.

25 Jesus Sosa, production manager of the radio station, a non-supervisory position, began working for the Respondent in 2000. As well as other duties, he also had a regular on-the-air program. His direct supervisor was Station Manager Martinez. Sosa testified that he and the other employees immediately experienced a different management style by Executive Director Fernandez that had a direct and negative impact on their work performance as well as their sense of job security. The employees knew that prior to Fernandez's employment by the Respondent, Sosa had worked on a community relations project with Fernandez, and that he had had several conversations with her after she became executive director. Therefore, they would present their concerns to Sosa, who became, in effect, their unofficial spokesperson. As Sosa testified, "On many occasions, my coworkers, being as I had had dealings with Ms. Fernandez in the past, would approach me and have me deal with her."

40 Fernandez, during the course of her testimony, implicitly acknowledged a new, more professional management style that would elicit more accountability from employees. This management style emanated both from the expressed disapproval by board members of her predecessor's lax, informal and permissive methods in dealing with employees, and from her own observations upon assuming her position as executive director. And exacerbating the tension that existed was the added difficulty of Fernandez having to determine what role Garcia, the former executive director, who had retired but would be returning either as a volunteer or, as Garcia preferred, in a paid position, would assume upon his return. Clearly the employees favored Garcia's style of management, yet Fernandez testified that the board of directors "wanted me to implement my own management style, and they knew that Ricardo's [Garcia] presence would interfere with that." Fernandez told the board she would work with Garcia in the capacity of fund development, but would not permit him to have management or supervisory responsibilities. The board agreed. Fernandez testified that because of this, "things got awkward pretty quickly" because the employees did not like the way the board was treating Garcia. In fact, Garcia remained at the station for about a month after his retirement. According to Fernandez, this "undermined" her presence as executive director, as the employees would go to

Garcia's office, shut the door, and in effect have private meetings with Garcia that Fernandez would not be privy to.

Thus, Fernandez was told by board members, including Board Chairman Jorge Lobos, "that the organization need to go under a major overhaul, that accountability needed to be implemented within the organization because there was little to no accountability within the organization, there was little, very, very little structure within the organization, implementing systems, policies, procedures, and accountability was the biggest thing." And the programs, both radio programs and community programs, had to be made more relevant to the Hispanic community. Further, when she first took over, Fernandez "was sort of in disbelief for a period of time, that people wouldn't show up to work on time, that you couldn't find somebody during their normal working hours, that sometimes it appeared people were just not showing up."

According to Sosa, the employees' concerns centered around Fernandez's aloofness and/or failure to communicate with the staff, and the disciplining or sanctioning of employees by giving them write-ups rather than simply being "talked to and given suggestions" as had been the practice under the former executive director.<sup>2</sup> Moreover, certain procedures had been changed without notification, and, according to Sosa, "we were disciplined because we were not doing them according to the new established changes." Further, employees were concerned that newer employees brought in under Fernandez's tenure seemed to be given more favorable treatment than the longer-tenured employees. There was an "emotional" toll on the employees as a result of Fernandez's management style.

Employees would talk about these matters during their lunch hour,<sup>3</sup> on the phone, and at employees' homes. Sosa also brought the employees' concerns to the attention of Station Manager Martinez, both at lunch in the presence of other employees, and more formally during conversations in Martinez's office.

Sosa recounted three conversations he had with Fernandez. During the first meeting he welcomed her, reminded her that they had worked together previously, and assured her of the employees' support. However, he also reminded her that after two or three weeks on the job she had not yet introduced herself to the employees and this had created "a little bit of tension." Several weeks later, in response to Fernandez' professed open door policy, Sosa again asked Fernandez to have a meeting with the employees and said, "I know you somewhat myself, but it's urgent that the other employees get to meet you also." Fernandez said that she would do so, and that she had a "plan to consider" with the employees. After this a meeting was held, and, according to Sosa, "We felt this first meeting was more of an attack than a welcome," as Fernandez made negative comments regarding the employees. On the third occasion, Sosa told Fernandez that the previously announced open-door relationship she desired to promote was "not exactly happening," because discipline had been "meted out because of our expressing ourselves."

<sup>2</sup> Sosa testified that during his nine-year tenure with the Respondent while Garcia was executive director, there were only two occasions when Garcia formally disciplined employees; Garcia's practice was to resolve problems informally through discussion and compromise rather than discipline.

<sup>3</sup> Most of the employees would eat lunch together at the same time, and the employees enjoyed the daily lunchtime social interaction.

## 2. Discipline of Jesus Sosa for requesting a meeting with members of the Board of Directors

On December 12, 2008, during a coffee break in the reception area, Sosa happened to be conversing with Jorge Lobos, chairman of the Respondent's board of directors, and Sosa took advantage of the situation to ask for a meeting with members of the board of directors. This was agreeable with Lobos, and the date and time of December 19 at 4:00 p.m. was agreed upon, as the members of the board of directors would be at the station for an anniversary milestone.

Sosa decided to send an email to each of the members of the board of directors notifying them of the meeting that had been agreed to by Lobos. The email, dated December 15, 2008 and addressed to KDNA Board Members, begins in English as follows:

I would like to call all members of the board to a special meeting, this Friday 19<sup>th</sup> the same day of KDNA's anniversary at 4:00 PM it will only take one hour, it is very important to discuss critical issues concerning the future of Radio Cadena. I will like all of you to make arrangements to attend, the meeting will be crucial for all of the employees and the service we provide to the community as well (sic) as our partners and including the board. Please don't miss this meeting for it may be the only opportunity we have to talk to you and expose our concerns.

The email concludes in Spanish; however, the English translation is as follows:

If you need more information or have any questions regarding this meeting, please contact me. This is not a meeting from the Director of the organization, Mario Fernandez, but from myself and co-workers that would like to attend the meeting to have the same opportunity. Therefore, I am asking you to contact me at my cell phone number...or at the station...if you so desire.

Apparently on Tuesday, December 16, 2008, Lobos approached Sosa at the station, and gave him a copy of the bylaws governing the board of directors. Lobos had underlined some language in the bylaws indicting that Sosa did not have the right to call a meeting of the board of directors. Sosa explained that he was not attempting to call a meeting of the board of directors; rather, he just wanted to speak to the members of the board of directors about matters of importance. Lobos also told him that Lobos had no problem meeting with Sosa at a regular board meeting. Then Lobos said that "they" wanted to meet with him later that day.

At this meeting were Lobos, Leonard Black, another member of the board of directors, and, to Sosa's surprise, Fernandez. Lobos said that the three were there ready to listen to what Sosa had to say. Sosa was upset because Fernandez was present, and said he was not willing to speak to Lobos and Black in the presence of Fernandez, as it "was not too professional to have the person present that I was going to report on." Lobos said Fernandez had a right to be there. Sosa said he would relate one of his concerns, and began explaining that Fernandez had inappropriately requested two employees to leave a meeting,<sup>4</sup> but said he would not discuss other matters without the presence of the other members of the board of directors. Black was very upset about the foregoing email Sosa had written, and said, "if I wasn't happy with the

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<sup>4</sup> This was apparently a previous Community Advisory Board meeting, open to the public. A memorandum that Sosa wrote contains reference to this meeting along with Sosa's observation that, "I believe that staff should have the opportunity to attend public meetings, to share their knowledge and keep up to date with things that happen in the community."

situation, why did I just not leave the radio station.” Sosa asked if he was being discharged, and Black said no. Fernandez mentioned that on several occasions Sosa had told her he was thinking about leaving, and also suggested that if Sosa was not happy working there why did he not just leave. Nothing was resolved, and the meeting concluded.

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At times material herein, Lobos was chairperson of the board of directors. Lobos testified that although he did tell Sosa on December 12 that Sosa could meet with the board, he is “not sure” whether he told Sosa he could meet with the board on Friday, December 19. In any event, he did not give Sosa permission to call a meeting of the board. Then, during the December 16 meeting, he advised Sosa that only the board members themselves could call an emergency meeting of the board, as the “Board cannot meet at the pleasure of anybody.” According to Lobos, there was a discussion between Sosa and Black, and Black felt Sosa “was not showing respect” to Black. Lobos further testified:

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And also I recommended him to follow some grievance procedure. I mean he has – and I think I told him, you have to do it with your supervisor first to let him know what are the problems, and wait for your supervisor (sic) answer. And then to the Executive Director. And then probably to talk with us.

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Black, treasurer of the board, testified that he and Lobos

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had some concern because Mr. Sosa had asked us as a Board to convene to meet with him. And we weren’t quite sure what that was about, and we were also a little nonplussed because we weren’t quite sure that...it was his position to convene us as a Board. Certainly we would have welcomed a conversation with him, but it probably wasn’t the right protocol for him to convene it.

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According to Black, Sosa explained he was concerned with the management style of Fernandez, and argued that the prior management style under Garcia “was quite adequate and functioned very well.” Black indicated that it was Fernandez’s prerogative to establish her own management style. They continued to discuss that point for some time, and during the discussion Sosa became “quite animated” and disagreed with Black. Black testified it was clear that Sosa “was very rigid on one point of view, and really wasn’t willing to listen to other points of view.” After some 25 minutes of going “back and forth in a circular fashion,” Black suggested that perhaps Sosa should quit his employment if he was really unhappy. Sosa asked if Black was firing him, and Black said no.

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Black testified:

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And we tried to explain that, you know, in an organization there’s certain rules and regulations that need to be time imposed on workers in terms of time and certain responsibilities and recording, letting people know what activities they’re up to in terms of the management chain, command and those kinds of things, and we felt that those were fair requirements on any staff person.

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My recollection is that we indicated to Mr. Sosa at that time that it wasn’t his prerogative to convene a meeting of the Board of Directors. That there was a protocol that he could go through the Executive Director and chain of command and see if he could get on our agenda.

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On December 18, 2008, Sosa sent another email to each of the members of the board of directors, as follows:

I am writing this email to you all the members that received an invitation to attend a meeting this Friday the 19<sup>th</sup>, that this meeting has been canceled, as I was informed by MR Jorge Lobos, most of the board members won't be here on Friday, I was called to a meeting on Tuesday where I was informed that we are welcome on the next board meeting to address the board on a structured form. I was told by Mr. Leonard Black that my email was offensive in part this email that I am writing is to assure you that it was sent in good faith, and the sole intention was to have an opportunity to ask for a venue of communication and open dialog which I believe in, if in any way any of my wording was offensive I apologize, it was not my intention in any way, that is actually the reason of the meeting to avoid misunderstanding. If anyone has any questions please feel free to contact me at my cell phone at any time..., Look forward to participate on the public meetings such as KAB and Board meetings, thank you very much.

On about December 22, 2008,<sup>5</sup> Fernandez handed Sosa an "Employee Counsel/Discipline Notice." This document specified that Sosa was being given a written warning and a six-month disciplinary probation, until June 22, 2008, for "Calling for a meeting with the Board of Directors without just cause before writing his grievance to his Supervisor first and then to the Executive Director." Fernandez testified that board members came into the station "pretty regularly," and spoke with employees about any matter of concern, and that the discipline was imposed solely because Sosa called a board meeting, and for no other reason.

I have carefully reviewed the testimony of Fernandez, and find that during the course of the hearing she was neither asked to explain, nor did she provide any explanation for the wording she elected to use in issuing the disciplinary warning and six-month probation to Sosa. The wording she elected to use implies that employees do indeed have the right to call a meeting of the board of directors provided they have "just cause" and/or "write" the "grievance to [their] Supervisor first and then to the Executive Director." Accordingly, the reason Fernandez gave for the discipline in the disciplinary notice is different than Fernandez's record testimony.

It is unnecessary to determine whether Sosa was attempting to call a meeting of the board. Clearly, Fernandez and all the board members understood Sosa's intent, namely, that he wanted to meet with the board members as a group and present his concerns. If Fernandez and the board members had simply wanted to make sure Sosa understood he had no right as an employee to call a meeting of the board, they could have simply told him so; and Sosa's email, for which he apologized prior to the discipline being imposed, could have simply been treated as a rather innocuous mistake rather than as a cause for his suspension.

From the testimony of Lobos and Black, and the wording of the disciplinary notice prepared by Fernandez, it is clear that all three individuals were primarily concerned with the proper protocol for processing employee concerns through a grievance hierarchy, culminating, as a last resort, with the presentation of the matter to the board of directors; and indeed, Fernandez imposed an additional requirement that this be done "in writing." This is what the disciplinary notice says; and therefore I find Sosa was disciplined because he did not adhere to this protocol.

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<sup>5</sup> There was considerable disagreement regarding the date the document was handed to Sosa. It appears unnecessary to resolve this matter.

In fact, the record does not establish there was such a protocol in place. The only reference to grievances in the employee handbook, is at page 7, Section 102, "Employee Relations": "If employees have concerns about work conditions or compensation, they are strongly encouraged to voice these concerns openly and directly to their supervisors."

5 Fernandez, during abbreviated cross-examination testimony on this matter, suggested that there were many conversations at staff meetings about "changing the lines of communication" so that employees would go to the station manager with their concerns prior to going to the executive director; however Fernandez did not testify that she had imposed a requirement that such communications be in writing. Further, I credit Sosa's testimony and find that he had  
10 brought his concerns to Martinez and Fernandez prior to attempting to bring them before the board of directors.

In *American Hospital Assn.*, 230 NLRB 54 (1977), employees bypassed their employer's formal grievance procedures, and opted to anonymously present their grievances through  
15 leaflets, entitled "Turkey Tactics" which they distributed around the workplace. The Board, in finding a violation of the Act, adopted the decision of Administrative Law Judge James L. Rose, who concluded, absent any case law to the contrary, "than an employer may not prescribe, to the exclusion of all other lawful means, the method by which employees may engage in concerted activities for their mutual aid and protection." See also, *Cordura Publications, Inc.*  
20 *d/b/a Mitchell Manuals, Inc.*, 280 NLRB 230, 230-31 (1986) (employees unlawfully disciplined for sending grievance letter to chairman of parent company's board of directors). Here, the Respondent has cited no case law contrary to the foregoing Board decisions. Nor does the Respondent contend that Sosa has done anything unlawful. Rather It is clear that the Respondent, being dissatisfied with the manner in which Sosa elected to bring the matter to the  
25 attention of the board of directors, decided to punish him for doing so.

In *Senior Citizen's Coordinating Council*, 330 NLRB 1100 (2000), the employer was found to have violated the Act by disciplining employees who presented their grievance through  
30 a letter to the employer's board of directors and others, threatening a strike if the highest ranking acting managerial official in their division was not replaced because of her negative impact on employees terms and conditions of employment. In the instant case it is clear from abundant record evidence, including the testimony of Black, that it was Sosa's intention to bring matters regarding Fernandez's "management style" to the board of directors on behalf of himself and other employees, and that such matters were in furtherance of the employees' mutual aid and protection. Thus, the employees believed Fernandez's management style with regard to  
35 employee relations, including discipline, rule making and the appearance of favoritism, were concerns to be addressed and resolved. Sosa, whom I credit, was the unofficial spokesperson for the employees, who discussed matters of common concern among themselves and in the presence of Station Manager Martinez. In addition, Sosa spoke directly and privately with  
40 Martinez and Fernandez regarding such matters. Further, as the record evidence shows, individual members of the board of directors had various conversations with employees regarding such matters at the Respondent's facility. And finally, Black, during the course of his testimony set forth above, defended Fernandez's management style as it affected the employees, in an effort to counter Sosa's contentions to the contrary. Thus, I do not find, as  
45 argued in Respondent's brief, that Sosa, in requesting a meeting with all members of the board of directors, was acting only on his own behalf and not concertedly on behalf of other employees.

Accordingly, on the basis of the foregoing, I find that by imposing the discipline on Sosa  
50 the Respondent violated Section 8(a)(1) of the Act as alleged.

### 3. Discipline of Jesus Sosa for speaking out during a meeting

5 The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by giving Sosa a one-week suspension without pay for “complaining at a staff retreat about the discharge of some of Respondent’s former employees.”

10 Fernandez testified that on Saturday, February 7, 2009 she moderated a “staff retreat” for the entire staff at the Respondent’s facility. The retreat had been in the planning stages for several months, and employees had been invited to give their input regarding the agenda items to be discussed. Fernandez testified:

15 [W]e had planned for this retreat to talk about a few different items, and one is where NCEC was going, the direction that we were headed in, and to conduct an interpersonal communications training which was at the request of one particular staff member, and then also to talk about the policies, and to talk about our benefits plan.

20 Fernandez began the meeting by asking employees to express their individual thoughts regarding what they expected to “take out of the retreat,” particularly what is it they expected to receive from the “interpersonal communications training” in order to improve communications, apparently among both staff members and supervisors.<sup>6</sup> One employee spoke up and complained about the focus of the retreat, saying that he wanted to discuss the next anniversary celebration of the station. Fernandez said, “You guys had two months...to give me some agenda ideas and this [the anniversary celebration] had never once been brought up...let’s just stay on task...” Then Sosa spoke up, and began talking about a “double standard,” namely, disparate treatment or favoritism that Fernandez displayed toward certain employees. Sosa said, “For instance, you allowed Teodora<sup>7</sup> to use work time to run personal errands. She is always late, she doesn’t come to work.” Fernandez replied, “You know, Jesus, you don’t know how much Teodora works here at NCEC and this is not the time, and this is not the place.” Sosa responded by saying, “Well, you know, you also told me that you were trying to get rid of Jorge [Lobos, chairman of Respondent’s board of directors] and Gabriel [Martinez, station manager].”<sup>8</sup> Fernandez said, “You are way out of line. You are way out of line. This is not the time or the place and you are dismissed.” Sosa got up and took his things, and, according to 35 Fernandez, ‘it was an “awkward, awkward moment,” and he walked out.

40 As a result of Sosa’s conduct, Fernandez issued an Employee Counsel/Discipline Notice to Sosa, dated February 12, 2009, and imposed a one-week suspension without pay, from February 13 through February 19, 2009. In the notice, Fernandez describes the foregoing conduct of Sosa, and states:

This incidents (sic) exhibits poor use of judgment and lack of professionalism.

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<sup>6</sup> Fernandez, during the course of her testimony, was not asked to give her understanding of what specific matters were incorporated within the general heading of “interpersonal communications.”

<sup>7</sup> Teodora Martinez-Chavez, an employee who was present in the room at the time.

<sup>8</sup> Station Manager Martinez was also present at the retreat.

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The staff retreat was scheduled to provide training for employees about the personnel handbook and interpersonal communications. The retreat was not to be used to attempt to slander a co-worker or the Executive Director. The Executive Director dismissed Mr. Sosa from the remainder of the staff retreat for insubordination and his attempt to create a hostile environment.

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Employee Tedora Martinez-Chavez, a project coordinator and underwriter specialist for the Respondent, was present at the retreat. Martinez-Chavez confirmed that the purpose of the retreat was to discuss the current status of the station and also to discuss communications. "Suddenly," according to Martinez-Chavez, "I was just sitting there" among the other employees, "when suddenly Jesus Sosa made a comment in regards to me coming in to work. Basically along the lines about that I come in at different times, and also something to the effect about running personal errands during my work time." She felt "offended" by Sosa's remarks. Fernandez told Sosa "he needed to stop." Sosa, however, continued, and then "proceeded to verbally also attack [Station Manager] Gabriel Martinez, by saying that ...she had plans to fire him," and also that she had plans to fire Jorge Lobos, chairman of the board of directors. Fernandez told Sosa "that he needed -- that this was not -- in so many words not appropriate to discuss here." However, Sosa continued, and Fernandez asked him to leave the meeting.

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Sosa's account of the meeting is as follows. Sosa was assigned by Fernandez to interpret in Spanish what she was saying to the group of employees in English, as some of the employees did not readily comprehend English. Fernandez asked the employees to each make a brief report regarding their duties. One employee, Ezequiel Ramirez, began his report by saying he was very happy to have a job, but that he was worried about loosing his job and becoming unemployed. He began to speak about some employees whom he believed had been unfairly discharged by Fernandez, and suggested that it would be appreciated if employees were not discharged without first being given the opportunity to explain their actions or conduct so that such matters might be resolved. Fernandez responded, and Sosa translated. Fernandez said she would not discuss the details of the discharges, and that she "wanted an end to these comments regarding the employees being discharged unfairly." She said that the discharged employees had been given many opportunities to correct their errors, and that "just like those other employees that had been discharged, we also had in our hands the power to...continue working as long as we did things accordingly." Then she told Ramirez, "If you do your job well, you will have work guaranteed. If not, you will be discharged."

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Fernandez's remarks caused Sosa to respond. He said he did not agree with what she was saying, He said the employees considered the discharges to be unfair because the discharged employees had not been given any prior warnings. Sosa said the current employees' concerns were serious, and that employees would like to have the opportunity to rectify problems before they resulted in discharge. Then, after first apologizing to his co-worker Teodora Martinez-Chavez for what he was about to say,<sup>9</sup> he went on to say that Fernandez showed favoritism to Martinez-Chavez, who was one of the new employees hired by Fernandez to take the place of employee Guadalupe Sotello, apparently one of the employees who had been discharged by Fernandez. Sosa said that it was not true that Fernandez would discharge employees only if they did not do their job well; then he elaborated, and explained that if that were the case, Martinez-Chavez "would not have the position that she had," because Martinez-Chavez "herself had told me that week—that during that week [she] had done three personal things during her work time that included leaving the station, which meant leaving the premises for quite a while..." Fernandez reprimanded him for these comments, and "said that I did not

<sup>9</sup> Martinez-Chavez does not remember whether Sosa apologized to her before making his statements about her, as she "was just caught off guard because I was just sitting there."

show any evidence and therefore I was lying.” Sosa replied that he was not lying, and added, “Just like you mentioned that you would get rid of Mr. Lobos [and] ... Mr. Martinez.” Fernandez told him to leave the meeting. Sosa asked her if he was just dismissed from the meeting or if he was being discharged. She said he was not being discharged.

Fernandez did not specifically contradict or dispute Sosa’s account of the discussion. However, she did testify that immediately before dismissing Sosa she said, “You are way out of line.” It is reasonable to conclude that Sosa may have incorrectly understood her to be saying, “You are lying.” Further, according to the testimony of Martinez-Chavez, whom I credit, Fernandez told Sosa that his remarks were “not appropriate to discuss here,” and asked him to leave the meeting. This seems to paraphrase Fernandez’s testimony on this point. Accordingly, I credit Sosa’s account of the meeting, but find Fernandez did not accuse him of “lying.”

The General Counsel does not contend that Sosa’s interjection of the issue of Fernandez’s perceived favoritism toward certain employees, as exemplified by Martinez-Chavez’s alleged work deficiencies, were germane to the issue raised by Ramirez during his remarks, namely, that employees should be given prior warnings before being discharged.<sup>10</sup> Fernandez’s remarks were to the effect that if employees did their work, they could be assured of continued employment. Sosa, however, wanted to demonstrate that some favorites of Fernandez could be assured of continued employment even if they did not do their work. Thus, Fernandez was talking about one thing, and Sosa chose to segue her remarks to his own ends, namely, an unrelated discussion of Fernandez’s perceived favoritism toward Martinez-Chavez.

Similarly, the General Counsel does not explain how Sosa’s additional remarks regarding Fernandez’s alleged intention to fire Station Manager Martinez and Board of Directors Chairman Lobos are relevant or pertinent to the employees’ concerns that they be given warnings and an opportunity to correct work deficiencies prior to being discharged.

The General Counsel cites *Atlantic Steel*, 245 NLRB 814, 816-17 (1979), as the precedent that should be utilized for assessing Sosa’s statements. In *Atlantic Steel*, the Board established guidelines for the resolution of issues regarding employee “outbursts,” noting that, “even an employee who is engaged in concerted protected activity can, by opprobrious conduct, lose the protection of the Act.” [Footnote omitted].

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<sup>10</sup> The complaint alleges only that Sosa was disciplined for “complaining at a staff retreat about the discharge of some of Respondent’s former employees,” and not that Sosa was disciplined for his remarks about Martinez-Chavez or about Fernandez’s intention to dismiss Station Manager Martinez or Board of Directors Chairman Lobos. On January 28, 2009, the hearing was adjourned to an indefinite date in order to take the testimony of one final witness, who would be testifying regarding an issue unrelated to Sosa’s discipline. The hearing was resumed on February 22, 2010, by video conferencing. At the beginning of that session, the General Counsel moved to amend the complaint by inserting the words, “and by complaining about preferential treatment,” to the aforementioned complaint allegation. Respondent’s counsel objected, and I ruled that the General Counsel could file a written motion after the close of the hearing so that Respondent’s counsel could be given the opportunity to review the matter, because if this were in the complaint initially the Respondent may have proffered evidence bearing on this issue. There has been no motion filed, and the complaint has not been so amended.

Here, however, assuming *arguendo* that Sosa's remarks fell within the context of concerted protected activity, it is questionable whether they may reasonably be characterized as outbursts and excused as spontaneous or impulsive behavior. Rather they appear to be rather calculated and preconceived. Thus, Sosa did not immediately react to Fernandez's statements by blurting out his remarks about Martinez-Chavez. Rather, he first talked about why he was in agreement with Ramirez that employees should be given warnings prior to being discharged; then he apologized to Martinez-Chavez for the things he intended to say about her in front of the entire employee complement; and only after these preliminary remarks did he then begin to speak about her work deficiencies and Fernandez's purported favoritism toward her.

Sosa is production manager for the radio station and has his own regular radio program. He is an articulate and experienced communicator, and could have readily made whatever point he was trying to make without specifically naming Martinez-Chavez. Clearly, Sosa knew his remarks concerning her alleged work deficiencies would offend her and were an unwelcome embarrassment to her. And, insofar as the record shows, Sosa and the other employees regularly worked with her. Under the circumstances, it is reasonable to conclude, absent any contrary record evidence illuminating Sosa's motivation for saying what he did, that Sosa's remarks regarding Martinez-Chavez were contrived to belittle her in front of her coworkers.

Fernandez noted in the disciplinary notice she issued to Sosa that such remarks were unprofessional and constituted an attempt to create a hostile environment among the employees. I agree. Similarly, it seems that Sosa's remarks about Fernandez's intention to discharge Lobos and Martinez, in the presence of Martinez, were gratuitous statements simply designed to embarrass both Martinez and Fernandez.

Accordingly, I conclude that Respondent's discipline of Sosa for the above conduct was not unlawfully motivated.

#### **4. Whether further discipline of Sosa was mandated by a progressive discipline policy**

The next discipline of Sosa, dated April 21 and/or April 30, 2009, will herein be referred to as the April 21 discipline. As a result of this discipline, Sosa was put on a one-year disciplinary probation, until April 21, 2010, and given a one-week suspension without pay from April 20, 2009 through April 24, 2009. The complaint does not allege that this discipline was imposed for concerted protected activity or union activity.<sup>11</sup> Rather, it is alleged that such discipline was premised on the prior alleged unlawful disciplines pursuant to a policy of progressive discipline. The disciplinary notice issued to Sosa describes various incidents as follows. Sosa was tardy on April 10, 13 and 14, after having been advised by Fernandez at a staff meeting that employees are required to be at work on time; further, on April 20, Sosa, who had requested 3 hours off for a 9:00 a.m. doctor's appointment, did not call in or show up for work the remainder of the day. The notice also states as follows:

Jesus was also heard on the air of Radio KDNA making disparaging comments about the management and Board of Directors on NCEC/ Radio KDNA on Thursday April 16<sup>th</sup> at 1:00pm. On Friday April 17<sup>th</sup>, Ms. Fernandez requested from Jesus a copy of the recorded program. Jesus provided a copy of the recording on April 21<sup>st</sup>.

<sup>11</sup> The Respondent recognized the Union as the collective bargaining representative of its employees on February 10, 2009.

The NEC management has tried various time to work in good faith with Jesus. The management, as well as the Board of Director (sic), recognizes the talent that Jesus possesses, however we are trying to instill an atmosphere of teamwork, cooperation, communication and collaboration. And it makes it difficult to implement this culture with constant resistance on the part of Jesus Sosa.

As noted above, there is no complaint allegation or contention of the General Counsel that Sosa did not engage in the foregoing conduct for which he was disciplined, or that the Respondent was, by such discipline, attempting to retaliate against Sosa for his past concerted protected activity. Accordingly, I find that Respondent's discipline of Sosa for the above conduct was not unlawfully motivated.

I have found that neither the February 12, 2009 discipline nor the April 21, 2009 discipline of Sosa was unlawfully motivated. However, the complaint references and the General Counsel argues that the lynchpin discipline of December 22, 2008, taints all subsequent disciplines as a result of the Respondent's policy of reviewing past disciplines prior to imposing further discipline. The General counsel relies upon the affidavit of Fernandez regarding the April 21 discipline that states, "I suspended Sosa because he had already some previous discipline." This "admission" is not helpful to the General Counsel's theory, as the last "previous discipline" imposed on Sosa was the February 12 discipline for his lack of professionalism, his derogatory remarks regarding co-worker Martinez-Chavez, and his accusation that Fernandez intended to discharge the station manager and the chairman of the Board of Directors. I have found that the discipline of Sosa for this conduct was not unlawfully motivated.

And in an email to the General Counsel, Fernandez replies to a letter from the General Counsel as follows:

I wanted to respond to your questions in the letter sent to us dated April 15<sup>th</sup> about our discipline policy.

1. No, NCEC does not have a formal progressive discipline policy, however we have recently drafted one but must go through the Policy Committee of the Board of Directors.
2. We did apply a progression of discipline to Carolina Velasquez Montes, Guadalupe Sotello and Jesus Sosa.

This "admission" is not helpful to the General Counsel's theory, as Fernandez was not asked what she meant by her response that "We did apply a progression of discipline..." Her reply could reasonably be interpreted to mean no more than that the individuals in question, including Sosa, received successive disciplines. I credit Fernandez's testimony that the Respondent has no policy of progressive discipline, and that she does not apply progressive discipline. Rather, as she testified, discipline is based on the "gravity of the violations of our policy." Further, the successive disciplines imposed on Sosa seem to be rather measured responses to rather serious infractions. Nor are they "progressive" in degree; thus, the February 12 and the April 21 discipline both impose a one-week suspension. And the record substantiates Fernandez's testimony, and her remarks in the April 21 discipline notice, that Sosa was considered to be a valuable asset to the Respondent, that the Respondent was not attempting to discharge him or cause him to quit, and that, "The management, as well as the Board of Director (sic), recognizes the talent that Jesus possesses, however we are trying to instill an atmosphere of teamwork, cooperation, communication and collaboration."

On the basis of the foregoing, the complaint allegations pertaining to the February 12, 2009 discipline of Sosa, and the complaint allegations pertaining to the April 21, 2009 discipline of Sosa are dismissed in their entirety.

**5. Refusal of Saida Birrueta's request  
for a co-worker as a witness during an interview**

The complaint alleges that the Respondent denied employee Saida Birrueta's request that she be permitted to have a union representative present at a March 19 interview she reasonably believed would result in disciplinary action against her.

As noted above, the Respondent recognized the Union as the collective bargaining representative of its employees on February 10, 2009.

Fernandez testified that a newly hired employee, Adriana Cisneros, who was hired as a receptionist, submitted written complaints to her alleging that employee Saida Birrueta, program coordinator and broadcaster, who had worked for the Respondent since 2003, was uncooperative and making it difficult for Cisneros to perform her assigned duties. After Fernandez discussed the matter with Station Manager Martinez, it was decided to attempt to bring the employees together to attempt to resolve their difficulties.

On March 18, 2009 Birrueta was first called in to Fernandez's office. Martinez was also present. The complaints by Cisneros were discussed,<sup>12</sup> and Birrueta disputed their validity. Then Cisneros was called into the office, and the discussion continued for some two hours, until after 6:00 p.m. The meeting was adjourned because of the extended discussion and the lateness of the hour, and was to resume the following morning, March 19.

Prior to the commencement of the March 19 meeting, Birrueta asked Fernandez "if the meeting that she was going to have was a disciplinary action." Fernandez said no. Birrueta asked "if I could have a co-worker as a witness and she told me no, that it would not be necessary because I would have my supervisor, Gabriel Martinez, as a witness and that he was enough."

Fernandez's testimony is similar:

Saida...said that she wanted a witness there or a union representative. I can't remember which of the two, and I said, 'Well, we don't need that. This is strictly a counsel. This is about you and Adriana coming to a better—to some agreement about how to work together better. This is not disciplinary at all. This is about how you guys can work something out. Besides you have your supervisor here.

First Martinez and then Cisneros entered the office, and the meeting continued. Birrueta testified that the mood started to change and, "There were moments when we got angry." Birrueta testified that Fernandez was saying her name in a loud voice, and Birrueta asked her

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<sup>12</sup> It appears unnecessary to recount the ensuing discussions in detail, as they are extensive and do not materially effect the issue under consideration here, namely, whether Birrueta was unlawfully denied union representation.

not to yell at her. Things became “so tense” that she “started feeling not well.”<sup>13</sup> Birrueta again asked Fernandez “if she would authorize me to go and bring one of my co-workers as a witness.” Fernandez said no. However, Cisneros was permitted to leave the room because she, too, did not feel well. After Cisneros left the room, according to Birrueta:

Maria Fernandez started to criticize me, saying I was not a professional person, that I was offensive—an offensive person, that I was on the defense, that she could see in me that I was not showing interest by attending meetings. She also said that I was away from the station, that I was missing there because I was attending too many appointments with my children.

She said I had a lot of potential, that she would like to see me grow in radio, that she said there was going to be a lot of changes, that she had lots of ideas. I told her that I would like to be a part of those ideas, to be a part of those changes, as long as she would not fire me. She told me, ‘No, that would not happen.’

Also, after she started to speak to me about the potential that I had, I started to cry. Some emotions that were conflicting that I was having, and that is what happened on that date.

Some three weeks later, on April 10, Martinez handed Birrueta an “Employee Counsel/Disciplinary Notice” form, dated March 19. Under the heading, “Description of Incident,” Fernandez states, inter alia:

Mr. Martinez and Ms. Fernandez met with Mrs. Rodriguez [Birrueta] on March 18, 2009. Ms. Rodriguez was explained that there had been some concerns brought forward by her co-worker, naming the complaints specifically. Ms. Fernandez and Mr. Martinez made it very clear to Mrs. Rodriguez that the meeting that was about to take place was strictly a counsel, and there was no discipline to be taken and that the goal of the meeting was to foster a better working relationship with her co-worker, Mrs. Cisneros.

Mrs. Rodriguez was very reluctant to come to a working solution. She was very argumentative, even talking over Ms. Fernandez, Mr. Martinez and Mrs. Cisneros. Ms. Fernandez had to excuse Mrs. Cisneros once again to speak with Mrs. Rodriguez about her negative attitude and that Mr. Martinez and Ms. Fernandez expect her to be much more cooperative with Mrs. Cisneros, particularly with the introduction of changes to improve the front reception area work flow.

<sup>13</sup> Fernandez testified that after the meeting continued it became “very, very combative... and it was worse than it was the day before.” In fact, Birrueta “became incredibly angry” and would not let anyone else talk, and at one point Fernandez told her to calm down but “she wouldn’t stop.”

I find, in accordance with the testimony of Birrueta, that she twice asked for a “co-worker as a witness.” Contrary to the complaint allegation, there is no evidence she asked “to be represented by the Union during an interview.”<sup>14</sup> Assuming *arguendo* that a “co-worker” in a unionized workplace is by definition a “union representative,” and that Birrueta thereby invoked her *Weingarten*<sup>15</sup> rights, it is clear that at the meeting Birrueta was assured she was being “counseled” and that no disciplinary action was contemplated or would be taken against her as a result of her participation in the meeting. Although the pre-printed form verbiage of the “Employee Counsel/Disciplinary Notice” she was given is somewhat ambiguous and does not itself state whether the form is to be interpreted as a counsel, a verbal warning, or both a counsel and verbal warning, the language inserted by Fernandez specifically states, in unambiguous language, that the meeting “was strictly a counsel, and there was no discipline to be taken”; and the notice does not reflect that any discipline was imposed. Accordingly, I shall dismiss this allegation of the complaint as, under the circumstances, I find Birrueta had no reasonable belief that her participation in the meeting might result in disciplinary action against her. See *Amoco Chem. Corp.*, 237 NLRB394 (1978).

## 6. Unilateral change of lunch hour policy

Union Representative Robert Koerner testified that the Respondent recognized the Union as the employees’ collective bargaining representative on February 10, 2009, at an open board of directors meeting. The initial bargaining session between the parties took place on June 23, 2009, after a 26-day strike had ended and the employees had returned to work.<sup>16</sup> Koerner represented the Union; Fernandez, together with Attorney Martin Muench, represented the Respondent. Prior to the commencement of “formal negotiations” Fernandez said, according to Koerner, that the Respondent wanted “to change the employees’ lunch periods to keep them separated at lunchtime.” At that time all the employees took their lunch hour beginning at 12:00 noon. Koerner was told, apparently by Fernandez, that the Respondent “had some employees that had been terminated or employees that were out on strike. And she didn’t want those employees in the lunchroom at that same time and wanted to keep them segregated.” Koerner replied that such matters as meals and rest periods and a lot of other items needed to be negotiated, and that the Respondent should not implement any changes to the employees’ working conditions. Fernandez said she would make no changes “based on directions from the board of directors.” Koerner presented an initial contract proposal, and the parties agreed upon a few “minor” issues. To date, no contract has been reached.

On the following day, June 24, 2009, the Respondent distributed and/or posted a memo headed “Lunch Schedule.” The memo is from Fernandez and is addressed to thirteen named employees. It states, without explanation, that, “As of today everyone will need to take their lunches at midpoint of their schedule. Thank you for your cooperation and have a great day.” It goes on to state that if the employee begins work at 6:00, 7:00, 8:00 or or 9:00 a.m., their lunch will be four hours later, at 10:00 or 11:00 a.m., or 12:00 or 1:00 p.m., respectively.<sup>17</sup>

<sup>14</sup> See *IBM Corporation*, 341 NLRB 1288 (2004), 1294, in which case the Board distinguishes between “co-workers” and “union representatives,” and reaffirms what it stated in *E. I. du Pont & Co.*, 289 NLRB 627 (1988): “...we best effectuate the Act by limiting the right of representation in investigatory interviews to employees in unionized workplaces who request the presence of a union representative.”

<sup>15</sup> *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

<sup>16</sup> The record does not reflect the reason for the strike.

<sup>17</sup> Fernandez testified that seven of the ten bargaining unit employees began work at 8:00 a.m., and therefore were required to take their lunch at 12:00 noon. The other three employees,

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including Sosa, came to work at 6:00, 7:00, and 9:00 a.m., and therefore they would not be able to have lunch with other bargaining unit employees.

Fernandez testified that the Respondent brought up the subject of changing the lunch hour near the end of the first negotiating session. Fernandez briefly stated her reasons for doing so, and Koerner, according to Fernandez, "just sort of shrugged his shoulder like it wasn't important. We didn't even have a discussion about it. We just said what we were going to do, what we wanted to do, and there was no discussion about it."

However, the testimony of Attorney Martin Muench, then Respondent's attorney, is quite different. When asked whether, during the negotiating session, there was any discussion about rest breaks or meal periods, Muench testified:

Yes, Bob [Koerner] brought up the fact that he had heard that we were talking about changing the lunch hour, and advised us that we couldn't do that without bargaining the same. I informed him that for a number of reasons we were doing it.

Muench then explained to Koerner the Respondent's reasons for implementing a new lunch hour schedule, and told Koerner that a Washington State Department of Labor Administrative rule requires that employees receive a lunch hour "around the fourth hour of their shift...We couldn't let them continue to put off their lunch hour to have lunch with their friends...We cannot bargain that to impasse." Muench testified that Koerner seemed to accept the explanation, and the matter "was never brought up again in any of our subsequent negotiations."

While both Muench and Fernandez indicated that Koerner simply did not object to the implementation of the new lunch-hour schedule, this is clearly contrary to what the Union did next. On June 29, 2009, the Union filed a charge against the Respondent alleging, inter alia, that the Respondent violated the Act by "Changing the lunch hour for bargaining unit employees without giving the Union proper notice and an opportunity to bargain." The scenario, I find, is therefore as follows: Koerner objected to the proposed change in the employees' lunch hour schedule; Muench and Fernandez told him this is what the Respondent intended to do and there would be no bargaining to impasse; Koerner shrugged; and the Union filed a charge. Obviously Koerner's alleged shrug, or his failure to mention the subject again, was a result of Respondent's total disregard of its bargaining obligation. Clearly the Union did not acquiesce in Respondent's conduct, as evidenced by the unfair labor practice charge it filed shortly thereafter. I credit Koerner's account of the matter.

I take official notice of the following provision of Washington Administrative Code, Chapter 296-126-092 (2), attached to the Respondent's brief, upon which the Respondent purports to rely: "No employee shall be required to work more than five consecutive hours without a meal period." According to the plain meaning of this provision, and contrary to the Respondent's position, an employer is not required to compel its employees take their lunch four hours after they begin work. Thus, any employees coming to work at 7:00, 8:00 or 9:00 a.m., including Sosa, could have all taken their lunch hour together at 12:00 noon. Further, I also take official notice of Washington State Administrative Bulletin Number ES.C.6, Revised 6/24/2005, at page 4, item (8), interpreting the foregoing requirement. Since, according to this interpretation, employees may waive the required meal period, it would appear that the Respondent's employee who began work at 6:00 a.m. could request that he be permitted to go to lunch at 12:00 noon together with the other employees.

The Respondent's additional reasons for unilaterally implementing a new lunch schedule are no more persuasive. Insofar as the record shows, all unit employees had always been permitted to take their lunch together at 12:00 noon. It seems rather implausible that at the very first bargaining session the Respondent would suddenly become preoccupied with certain

concerns-- lunchroom congestion and lack of adequate office personnel to handle noontime calls-- as an excuse to make unilateral changes. Nor did the Respondent explain why, after apparently years of past practice, this matter became so urgent. I find that the Respondent's proffered explanations are untenable and have no validity, and that therefore the Respondent had no compelling reason to justify its circumventing the collective bargaining process.

The foregoing conduct of the Respondent, namely, unilaterally announcing and implementing a new lunch policy without bargaining with the Union, on the day following the very first bargaining session between the parties, "essentially told the employees that their representative had no voice in the matter." *Kurziel Iron of Wauseon Inc.*, 327 NLRB 155, 156 (1998). On the basis of the foregoing, I find that the Respondent has violated section 8(a)(5) of the Act. *Kurziel Iron of Wauseon, supra*; *Jackson Hospital Corp. d/b/a Kentucky River Medical Center*, 340 NLRB 536, 545 (2003).

### Conclusions of Law and Recommendations

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(a) (1) and (5) of the Act as found herein.

### The Remedy

Having found the Respondent Northwest Communities Education Center has violated and is violating Section 8(a)(1) and (5) of the Act, I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."

### ORDER<sup>18</sup>

The Respondent, Northwest Communities Education Center, its officers, agents, successors, and assigns, shall:

Cease and desist from:

- (a) Disciplining employees for bringing grievances to the attention of the full board of directors.
- (b) Unilaterally announcing and implementing a new lunch schedule without prior notification to and bargaining with the Union as the exclusive bargaining representative of its employees.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

<sup>18</sup> If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:

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(a) Expunge from the personnel file of Jesus Sosa any reference to his discipline for attempting to bring grievances to the attention of the full board of directors.

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(b) Rescind, in writing, the June 24, 2009 implementation of the new lunch schedule for employees and, upon the Union's request, bargain in good faith with the Union regarding this condition of employment.

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(c) Within 14 days after service by the Region, post at its Granger, Washington facility copies of the attached notice marked "Appendix."<sup>19</sup> Copies of the notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure

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(d) Within 21 days after service by the Regional Office, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

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Dated: June 18, 2010.

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Gerald A. Wacknov  
Administrative Law Judge

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<sup>19</sup> If this Order is enforced by a judgment of the United States Court of Appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

**WE WILL NOT** discipline employees for attempting to bring grievances to the attention of the full Board of Directors.

**WE WILL NOT** unilaterally change your lunch hour schedule without bargaining in good faith with the Union regarding this condition of employment. The collective bargaining unit includes the following positions:

Evening Radio Operation, Secretary/Receptionist,  
Underwriting Specialist, Production Coordinator,  
News Director, NCEC Administrative Assistant,  
Radio Announcer/Producer and Comptroller

**WE WILL** expunge from employees' personnel files any reference to discipline imposed for attempting to bring grievances to the attention of the full Board of Directors.

**WE WILL** notify you in writing that we have rescinded the change in your lunch hour schedule.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce employees in the exercise of the foregoing rights guaranteed them by Section 7 of the Act.

NORTHWEST COMMUNITIES  
EDUCATION CENTER

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(Employer)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

**This is an official notice and must not be defaced by anyone.**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be referred to the Board's office, 915 2<sup>ND</sup> Avenue, Room 2948, Seattle, WA 98174-1078, Phone 515/284-4391